

**The Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department
Administrative Office
Two Center Plaza, Suite 210
Boston, MA 02108**

**Probate and Family Court Law Clerk
Position Description and Application
September 1, 2009 - August 31, 2010**

Posting Dates: July 9, 2008 through September 24, 2008

Position Description: A judicial clerkship in the Massachusetts Probate and Family Court offers a unique, exciting and rewarding environment in which to begin a legal career. The Probate and Family Court hears cases on subjects relating to all aspects of a person's life, from birth to death. Law clerks in the Probate and Family Court are exposed to a wide variety of family, probate and equity issues; including adoption, paternity, custody, divorce, guardianships, legal bioethics, petitions to partition real estate, trust reformations and will contests. The law in these areas is constantly evolving and cases of first impression often confront the court, making a clerkship experience in the Probate and Family Court interesting and challenging.

Law clerks work directly with the Justices, and under the supervision of the Administrative Attorney for Legal Research Services and the Chief Justice. Law clerks conduct research, write legal memoranda, and draft findings of fact, conclusions of law, judgments, and orders. In addition, law clerks have the opportunity to observe hearings and trials which expose them to court procedure and evidentiary issues.

Law clerks in the Probate and Family Court serve a one-year term. Each spring, a select number of law clerks are invited to return for an additional year.

Law clerks apply to serve in either Eastern or Western Massachusetts. The majority of opportunities to serve are in Eastern Massachusetts. All law clerks are assigned by the Administrative Attorney for Legal Research Services to three rotations of four months each. In Eastern Massachusetts, the law clerks may be assigned to any of the following eight divisions: Bristol, Barnstable, Essex, Middlesex, Norfolk, Plymouth, Suffolk, and Worcester. Law clerks in Eastern Massachusetts may also be assigned to the Administrative Office. In Western Massachusetts, law clerks are assigned to the Berkshire, Hampshire, Hampden, and Franklin Divisions. The rotation system gives law clerks the opportunity to work with numerous judges and to gain a broader understanding of the workings of the Probate and Family Court.

Position Requirements: The Probate and Family Court invites well-rounded and distinguished law students, recent law school graduates, and practicing attorneys to apply for the clerkship positions. Solid academic credentials are important, however, there are no rigid requirements regarding class rank or standing. Courses in probate and/or family law, research assistant positions, prior work experience in the areas of probate and family law and clinical placements/internships are considered important and are viewed quite favorably.

The Probate and Family Court seeks applicants who: demonstrate an interest in probate and/or family law; possess an ability to write legal memoranda clearly and concisely; possess knowledge of legal research techniques and court procedures and practices; possess an ability to establish working relationships with Justices; possess an ability to adjust to different courthouse environments and personnel; will commit in writing to serve for the entire one-year term; possess a law degree from an ABA accredited law school as of September 1, 2009, or are statutorily eligible to sit for the Massachusetts Bar Exam; are residents of the Commonwealth of Massachusetts for the duration of the law clerk term; and have access to a motor vehicle for travel to court locations throughout Eastern or Western Massachusetts.

AFFIRMATIVE ACTION / EQUAL OPPORTUNITY EMPLOYER

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SECTION A: Preparation of the Application Package

Please read the following instructions carefully. Incomplete or late packages will not be considered.

The application package must be postmarked by September 24, 2008. Each applicant must submit **four sets** (an original and three copies) of the following materials, which will constitute the "Application Package." The application package must be stapled and collated in the following order ("1." on top):

1. Cover Letter

In a one page cover letter, please explain your interest in a judicial clerkship with the Probate and Family Court. Briefly outline your background, if any, in probate and/or family law. Please indicate whether you are applying to serve in Eastern Massachusetts or Western Massachusetts.

2. Massachusetts Trial Court Application for Employment Form

The Trial Court application form is available at any Massachusetts state courthouse. The form may also be downloaded by going to www.mass.gov/courts/site/index.html, and clicking on "Application, for Employment." The form must be completed in its entirety, unless a section is specifically noted as voluntary.

3. Resume

4. Official Law School Transcript

An official transcript must be submitted with the application package. When submitting the application package, please do not have your law school forward your transcript separately. Your transcript must be included in your application package.

If offered a law clerk position, prior to the commencement of employment in September 2009, an official law school transcript is required to verify your final academic record and date of graduation.

5. Writing Sample

Each applicant must submit a writing sample based upon one of the three factual scenarios included in Section E of this Position Description and Application. The writing sample shall consist of a six-page memorandum of law on one of the factual scenarios on pages four through five of this Position Description and Application. **Please do not send any other writing sample.** Please note the following requirements:

- a. Apply only Massachusetts law.
- b. The writing sample may not exceed six pages. It must be typed and double-spaced.
- c. The writing sample must be the original work of the applicant and may not be edited by another party.

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SECTION B: Submission of the Application Package

Please submit the completed application package (four sets, consisting of the original application package and three copies) to the address below:

PROBATE AND FAMILY COURT ADMINISTRATIVE OFFICE
Attention: Denise M. Fitzgerald, Administrative Attorney for Legal Research Services
Two Center Plaza, Suite 210
Boston, MA 02108

1. The application package as described in Section A must be **postmarked** no later than **Wednesday, September 24, 2008**. Late application packages will not be considered.
2. Please do not submit an incomplete application package. Amendments or additional information will not be accepted. Incomplete application packages will not be considered.
3. Please do not fax or e-mail any portion of the application package. Faxes and e-mails will not be considered.
4. Please do not telephone the Administrative Office with inquiries regarding the receipt of your application package. If you would like acknowledgment of the receipt of your application, please include a self-addressed, stamped envelope with your application package. Please allow ten days for the return of the acknowledgment.

SECTION C: Interview Process

Two rounds of interviews are conducted for these positions. The first round is held in October. The second round is held in late October or early November before a three-person panel consisting of the Chief Justice of the Probate and Family Court, the Court Administrator and the Administrative Attorney for Legal Research Services.

Offers are extended in late November or early December.

SECTION D: Benefits Package

The employee benefits package is consistent with other Massachusetts Trial Court law clerk programs and includes:

1. a first-year salary of \$47,018.74 (Level 16, Step 1);
2. subsidized health, dental and vision insurance;
3. paid vacation, personal and sick time.

In addition, Probate and Family Court law clerks are afforded the opportunity to attend educational seminars.

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SECTION E: Writing Sample Factual Scenarios

Question 1

Harry's first marriage ended in 1998. In 1999, Harry and Winnie married. After the marriage, Winnie moved into the house that Harry shared with his two children. Shortly after the marriage, Harry executed a will which left one-half of the house to Winnie and the other half to his two children. Harry named Winnie as the executor of his estate, as well as the trustee for his two children. Winnie enjoyed decorating and doing home improvement projects. During the first year of their marriage, Winnie spent \$75,000.00 on projects which increased the value of the house. Harry died in 2003. At that time, Harry's two children went to live with their mother.

Following Harry's death, Winnie continued to live in the house and she paid all of the utility bills, taxes and routine maintenance. Winnie was able to carry these costs from the proceeds of a life insurance policy that Harry had taken out in 1997, for the benefit of "his spouse." Winnie was appointed the executor of Harry's estate and trustee for his two minor children. Winnie filed an estate inventory listing the house as the only significant asset. Winnie also received a small pension. After living in the house alone for a few years, Winnie, as executor, decided to sell the house. Winnie entered into an agreement to sell the house for less than the amount listed on the inventory filed with the Court. Before the proceeds were divided, Winnie wanted to be reimbursed for the home improvement projects. Winnie also wanted the proceeds to be distributed immediately, so she could buy another home.

At the closing, Winnie reimbursed herself for all of the payments that she had made for taxes, utilities, and routine maintenance, as well as the \$75,000.00, and then told her lawyer to disburse immediately all the rest of the net proceeds from the sale of the house. Winnie placed the children's share into two equal trust accounts for each child's benefit.

Winnie then prepared and filed her first account as executor. The children have objected to the account and have filed petitions to remove Winnie as executor and trustee. Mary, the children's mother, has also filed a petition seeking the funds from the life insurance policy.

The Judge asks you to research and analyze the issues involved. Specifically, he asks:

1. Whether Winnie had the authority to sell the house and disburse the proceeds as she did?
2. How should the Court rule on the petition to remove Winnie as executor?
3. How should the Court rule on the petition to remove Winnie as trustee?
4. How should the Court rule on Mary's petition?

Question 2

Wanda and Henry's parents arranged their marriage which took place in 1998. Wanda and Henry met for the first time at the ceremony. After the marriage, Wanda and Henry lived in the guest house at Wanda's parents' home. As head of the household, Henry felt entitled to maintain control as he saw fit. One way of doing this was to slap Wanda. Henry might slap Wanda for not fixing dinner on time, for not having the laundry done to his satisfaction, or for no reason at all. Wanda was occasionally bruised by the slapping. Wanda did not complain of this treatment, because it was consistent with how she viewed her parents' marriage.

In 2000, Henry was offered a job that required Henry and Wanda to move. Henry rented them a condo in a high-rise building in Boston. Henry earns approximately \$200,000.00 annually. Henry never allowed Wanda to work outside of the home. Wanda's parents provide her with an allowance of \$750.00 per week. However, Henry demands that Wanda contribute 2/3 of the allowance to Henry to compensate him for his expenditures.

Wanda enjoyed living in Boston and made friends with people living in the high-rise. As her social circle expanded, Wanda realized that Henry's controlling behavior was not considered the norm. In fact, Wanda grew very upset that Henry continued to treat her the way he did. On July 4, 2001, Wanda moved out of the condo and into an apartment

of her own. Wanda pays for the apartment with money that she saved from her allowance.

Although she thinks it unlikely that she will return to Henry, Wanda tells Henry and her parents that she just needs some space and time. Wanda is afraid that if her parents find out her true intentions that they will stop her allowance, like they did to her older sister when she divorced last year.

While the parties were separated, Henry moved to California. After a year of living apart, Wanda summoned the courage to file for divorce based on cruel and abusive treatment. In her complaint, she also asked for alimony. Henry was in California when he found out that Wanda had filed for divorce. Irate, Henry called Wanda and screamed at her that he would make sure that she never got a dime from him, if it was the last thing that he did. Wanda immediately sought an *ex parte* restraining order. The judge granted the restraining order and ordered Henry to stay away from Wanda and to surrender any firearms to the authorities in California. Shortly thereafter, Henry filed a counterclaim for divorce based on utter desertion; a motion to dismiss Wanda's complaint for divorce; motions to vacate and dismiss the restraining order; and an answer to Wanda's complaint in which he challenges Wanda's request for alimony.

The Judge asks you to research and analyze the issues involved. Specifically, she asks:

1. How should the Court rule on Wanda's complaint for divorce based on cruel and abusive treatment and Henry's counterclaim based on utter desertion? How should the Court rule on Henry's motion to dismiss?
2. How should the Court rule on Wanda's request for alimony, and what factors should be considered?
3. How should the Court rule on Henry's motion to vacate the restraining order?

Question 3

Frankie grew up in Farmland, a small town in western Massachusetts. He attended a local high school and college. After graduating from college in 1993, Frankie moved to Boston and accepted a high-paying job that required him to travel extensively. On a business trip to Germany, Frankie met Wilhelmina. It was love at first sight, and they married shortly after meeting. Ten months later, Frankie and Wilhelmina had a baby girl, Gabriella. Wilhelmina found adjusting to life in Boston difficult and this put a strain on Frankie and Wilhelmina's marriage. In 1999, when Frankie received an invitation to his 10th high school reunion, he decided to attend alone. At the reunion, Frankie rekindled his romance with his high school girlfriend, Margaret Neverleft. Frankie never mentioned his wife and child. After the reunion, Frankie and Margaret continued their romance. Because of his job, he was able to visit Margaret often. Two months after the reunion, Margaret told Frankie that she was pregnant. When the baby was born, Margaret named him Sean Neverleft. Margaret listed Frankie's name on the birth certificate. Frankie visited Margaret and Sean as often as he could, and helped them out financially. As Sean got older, Frankie, Margaret and Sean would attend the birthday parties of Margaret's nieces and nephews, as well as other Neverleft family events. Frankie enjoyed taking Sean to the playground and other sporting events. When Sean was ready to start school, Margaret wanted to move to a better school district. Frankie helped Margaret finance the purchase of a new home. Whenever Margaret brought up getting married, Frankie would say that they didn't need a piece of paper to prove how they felt about each other. In July 2007, Frankie suddenly stopped visiting. Margaret tried to reach him on his cell phone, but was never able to contact him. At the Labor Day parade in Farmland, Margaret discovered why Frankie had stopped visiting. While on vacation in Germany, Frankie had died in a car accident on July 4th. Soon thereafter, Margaret and Wilhelmina found out about each other. Both were devastated and angry. Eventually Margaret was contacted by Frankie's attorney who was the named executor in Frankie's will. Frankie had done well for himself and had an estate worth \$5 million. Frankie left 75 percent of his estate to "his wife, Wilhelmina, and daughter, Gabriella." The remaining was left to "Sean." On July 7, 2008, Margaret filed a complaint to establish that Frankie was Sean's father, and to have a child support order entered. Wilhelmina filed a motion to dismiss.

The Judge has asked you to research and analyze the issues involved. Specifically, he asks:

1. What factors should the Court consider when ruling on Margaret's complaint?
2. How should the Court rule on Wilhelmina's motion to dismiss?